

1 IN THE UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4 UNITED STATES OF AMERICA, }
5 }
6 } Plaintiff, }
7 } }
8 } v. }
9 } }
10 } KENDALL R. CARTER, }
11 } }
12 } Defendant. }
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BEFORE THE HONORABLE
CHIEF DISTRICT JUDGE WAVERLY D. CRENSHAW, JR.

APPEARANCES:

For the Plaintiff: Ms. S. Carran Daughtry
110 Ninth Avenue, S., Suite A961
Nashville, Tennessee 37203

For the Defendant: Mr. Peter J. Strianse
315 Deaderick Street, Suite 1700
Nashville, Tennessee 37238

PREPARED BY:

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1 The above-styled cause came on to be heard on
2 July 16, 2018, before the Honorable Waverly D. Crenshaw, Jr.,
3 Chief District Judge, when the following proceedings were
4 had, to-wit:

5 THE COURT: All right. Be seated. We're here on
6 Case 15-162, United States of America versus Kendall Carter.

7 This was originally set for sentencing today, but
8 I have received yesterday the motion to continue the
9 sentencing date so that counsel can consider how the decision
10 in United States versus Carpenter -- I guess *Carpenter versus*
11 *United States* might impact the case.

12 MR. STRIANSE: That's correct, Your Honor.

13 THE COURT: Okay. Does the Government object?

14 MS. DAUGHTREY: I do not object to a continuance,
15 Your Honor.

16 THE COURT: Okay. How much time?

17 MR. STRIANSE: Your Honor, I would think --
18 Mr. Carter is held, of course, in pretrial detention. He's
19 up in Grayson County, which is about 150 miles north of here.
20 And I see him regularly. But I would suggest maybe four
21 weeks to make sure that I can do my research and writing and
22 travel up to see him and go through it and make sure it's
23 what we all want before it's filed.

24 THE COURT: It may be a little bit more than four
25 weeks, or unless you want to go less than four weeks

1 because --

2 MR. STRIANSE: A little bit more is fine, Your
3 Honor.

4 THE COURT: Well, it may be more than a little
5 bit.

6 We start a jury trial on the 14th of August, which
7 would be exactly four weeks, but that's going to go four
8 weeks. But we're going to take Fridays off.

9 MR. STRIANSE: And this is the filing deadline
10 we're setting now; is that right, Your Honor?

11 THE COURT: Oh, no. I thought we were setting the
12 deadline to --

13 MR. STRIANSE: That's fine --

14 THE COURT: Okay. Maybe we better say --

15 MR. STRIANSE: -- file my supplemental motion.

16 THE COURT: Sounds like you need four weeks for
17 that?

18 MR. STRIANSE: I would ask the Court for four
19 weeks for that.

20 THE COURT: Okay.

21 MR. STRIANSE: And then Ms. Daughtrey is going to
22 need some time to respond.

23 THE COURT: Okay. Well, we can do that.

24 So why don't you file your supplemental, I guess
25 motion, August 24th?

1 MR. STRIANSE: That's fine, Your Honor.

2 THE COURT: And then Ms. Daughtrey, when do you
3 want to file your response?

4 MS. DAUGHTREY: If I could have two weeks, that
5 would be great. So the 7th maybe.

6 THE COURT: Of September?

7 MS. DAUGHTREY: Of September, yes.

8 THE COURT: And then do we need to schedule a
9 hearing on your motion?

10 MR. STRIANSE: I think so. A short hearing.

11 THE COURT: Do you anticipate that being an
12 evidentiary hearing, possibly?

13 MR. STRIANSE: It possibly could be. We may be
14 able to do it just on -- the Court may remember we litigated
15 those Kik records when the Government filed an affirmative
16 motion in limine to try to get them in without a witness
17 using the business records exception. The Court may recall
18 that.

19 THE COURT: I do.

20 MR. STRIANSE: Okay. And it may be that the
21 motion is decided just on argument and those records.

22 THE COURT: All right. So if there's a need for a
23 hearing -- if there's a hearing -- that assumes that the
24 Court agrees we need a hearing -- then let's schedule that
25 for Friday, September the 14th at 3:30.

1 MR. STRIANSE: That's fine, Your Honor.

2 THE COURT: And if we decide before then that we
3 don't need a hearing, I would like to turn that into the new
4 sentencing date.

5 MR. STRIANSE: Yes, Your Honor. And if I believe
6 I need a hearing, I'll put that in the caption and ask for
7 it.

8 THE COURT: Yeah. And then Ms. Daughtrey -- now,
9 while you're at the podium and while we're here. And I got
10 your second motion, the supplemental position, with respect
11 to sentencing factors. So I think the Government needs to
12 respond to the restitution issue he's raised.

13 MS. DAUGHTREY: Yeah, I haven't had a chance to
14 look at these since they were just filed.

15 THE COURT: Okay. I appreciate that.

16 MS. DAUGHTREY: Yeah.

17 THE COURT: Me, too.

18 And then, Mr. Strianse, we're on the same page in
19 your second judicial recommendation. And I would be -- I was
20 already inclined to do something like this, so this really
21 fleshed it out good. I reworded it a little bit.

22 I think -- what I understand is that I can make a
23 request for a manager's variable, and you have to use that
24 language.

25 MR. STRIANSE: Yes, Your Honor.

1 THE COURT: And request that his security
2 clearance be adjusted because of certain findings.

3 MR. STRIANSE: Yes, Your Honor.

4 THE COURT: I think I need to make certain
5 findings to support my recommendation for a manager's
6 variable.

7 MR. STRIANSE: I think you would. And what we're
8 concerned about is the sentence length. And we're asking you
9 to waive that public safety factor.

10 THE COURT: Okay. And I think even on top of
11 that, given that he's going to have the sex offender
12 classification, I still need to make a manager's variable
13 request.

14 MR. STRIANSE: That's my understanding.

15 THE COURT: And if you would give me proposed
16 findings of fact --

17 MR. STRIANSE: I will, Your Honor.

18 THE COURT: -- I'll include that in the judgment.

19 And then in the meantime -- the reason I say that
20 is Judge Trauger and I went to a conference. And this was
21 discussed. They'll give it more consideration if I say why
22 factually --

23 MR. STRIANSE: Yes, sir.

24 THE COURT: -- a manager's level on his security
25 classification should be considered.

1 MR. STRIANSE: Yes, sir.

2 THE COURT: So you can add that by the time we get
3 to the sentencing.

4 MR. STRIANSE: I will.

5 THE COURT: And then the other thought I had --
6 you have in here the SOMP facility. So I had that. And the
7 other thought -- and this may be undoable. Mr. Carter has
8 several years of college already.

9 MR. STRIANSE: Yes, sir.

10 THE COURT: In fact, I think he's like 23 credit
11 hours from getting the degree.

12 MR. STRIANSE: I believe that's correct.

13 THE COURT: I wish it were some way that we can
14 have BOP consider how he might be able to complete that
15 college degree. The problem is that's going to require him
16 to be online. And they're not going to want that. Unless he
17 is given access to a computer -- I'm not a computer whiz --
18 that prohibits from going on certain sites. Do you see what
19 I'm --

20 MR. STRIANSE: Mr. Carter's family has consulted
21 with a BOP prison specialist, a criminologist by the name of
22 Joel Sickler, who has been in this field for about 30 years
23 or so. And he helped us come up with the language about the
24 management variance and the waiver of the public safety
25 factor for the sentence length. I'll talk to him about ideas

1 that he may have about completion of college and present that
2 to the Court.

3 THE COURT: It seems to me what may be more
4 realistic is that after he's there a while and is in good
5 behavior, and otherwise compliant, then we might make that
6 request --

7 MR. STRIANSE: Yes, sir.

8 THE COURT: -- that he be allowed to go online.
9 Unless -- as I understand it, it's two ways it can be done.
10 One, it can be done online, or, two, it can be done if
11 there's a community college near by that facility. So you
12 might look into that, too.

13 MR. STRIANSE: I will.

14 Years ago they used to have professors from
15 community colleges come into some of the camps and teach
16 classes, but it's my understanding this is only anecdotal,
17 that they've done away with that.

18 THE COURT: Okay. But let me be real, real clear.
19 This is only a recommendation. They can -- Bureau of Prisons
20 can do whatever they want to do and totally ignore my
21 recommendation. However, I'm told by their lawyer that if I
22 make a specific request and say the words "manager's
23 variable," in quotes, that makes them do certain things that
24 may get it more consideration.

25 MR. STRIANSE: Thank you.

1 THE COURT: And let's see. I think I had one more
2 thing. Yeah, that was it. It was the college and the -- all
3 right.

4 So we'll enter an order rescheduling this briefing
5 on a supplemental motion and get an order done getting it
6 back on the docket.

7 Anything else from the Government?

8 MS. DAUGTREY: No, Your Honor.

9 MR. STRIANSE: No, Your Honor. Thank you.

10 THE COURT: Thank you.

11 (Court adjourned.)

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1 REPORTER'S CERTIFICATE

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3 I, Lise S. Matthews, Official Court Reporter for
4 the United States District Court for the Middle District of
5 Tennessee, with offices at Nashville, do hereby certify:

6 That I reported on the Stenograph machine the
7 proceedings held in open court on July 16, 2018, in the
8 matter of UNITED STATES OF AMERICA v. KENDALL R. CARTER, Case
9 No. 3:15-CR-00162; that said proceedings in connection with
10 the hearing were reduced to typewritten form by me; and that
11 the foregoing transcript (pages 1 through 9) is a true and
12 accurate record of said proceedings.

13 This the 4th day of December, 2018.

14

15 /s/ Lise S. Matthews
16 LISE S. MATTHEWS, RMR, CRR, CRC
17 Official Court Reporter

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